

June 14, 2004

Mr. B.C. "Jay" Jackson, Jr.  
Mobility Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, D.C. 20554

**FILED VIA ECFS**

Re: WT Docket No. 02-86  
AirCell, Inc. Request for Extension of Waiver

Dear Mr. Jackson:

AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless ("Petitioners") ask the Commission to consider the full record concerning the likelihood and extent of interference that would be caused by grant of the AirCell extension request. AirCell, as the party requesting the waiver and the secondary spectrum user, has the burden of showing that its operation will not cause harmful interference to cellular operations. AirCell has not satisfied this burden.

AirCell claims it has a million-mile collection of flight test data.<sup>1</sup> It has never supplied that data to the Commission for examination, however. Instead, AirCell has relied on very limited test data from 1997 and more recent laboratory tests. This can only be because either the actual, real-world data in its million-mile database fails to support AirCell's claims or the database contains little, if any, relevant data.

AirCell's inability to provide data on which the Commission can rely in assessing its waiver extension request is inexcusable. Last December, for example, the Commission requested that parties submit "ordinary, everyday operating data" concerning mobile power levels, and not "data recorded during special tests conducted by parties or their consultants under controlled conditions." AirCell was unable to submit data that was responsive, despite its

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<sup>1</sup> See, e.g., AirCell Engineering Review of V-Comm Reports at 2.5-1 (claiming to have "4000 hours (close to one million miles!) of flight test data."), Exhibit B to Reply Comments of AirCell, Inc. (filed June 9, 2003).

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alleged million-mile database. Instead, it supplied a small amount of data from a handful of controlled test flights.

Petitioners are not the parties with the burden of proving interference; AirCell is responsible for proving the absence of harmful interference. Nevertheless, Petitioners engaged V-Comm to conduct exhaustive tests of the AirCell system's potential for interference with terrestrial cellular service, at considerable expense. As you are aware, the tests demonstrated that AirCell's operations would likely cause disruptions to thousands of digital and analog cellular calls throughout a wide corridor following the flight path of an AirCell-equipped plane. Petitioners also engaged V-Comm to collect data concerning actual, real-world mobile power level utilization that was directly responsive to the Commission's December 2003 letter, unlike AirCell. That data was submitted dated February 19, 2004.

We note that AirCell has not seriously contested the validity of the data submitted in the latter filing. In fact, AirCell acknowledged on March 1 that "V-Comm's recordings of DPC levels are generally representative of AirCell operations."<sup>2</sup> This is particularly significant because the DPC levels measured are consistent with those used in V-Comm's analysis of the likelihood of AirCell interference.

Given AirCell's endorsement of V-Comm's data, AirCell sought to discredit the analysis of that data. AirCell's criticisms, however, have no merit. For example, AirCell claims that it cannot assess the validity of the analysis without having an opportunity to "fully calibrate the aircraft systems"<sup>3</sup> — but the flights that were observed were real-world AirCell customer flights; the aircraft systems were calibrated by AirCell and were installed by AirCell's employees, contractors, or agents. As a result, the measured data must be considered representative of AirCell units in actual use, given that AirCell has produced no real-world measurements of its own.

AirCell also tries to muddy the waters by referring to the "average" or "typical" power levels of its airborne units,<sup>4</sup> but the Commission's concern is whether the *actual* power level of units in operation will be sufficient to cause harmful interference. A given unit might have a power level several dB higher or lower than the "average" unit, and each transmitter in an aircraft in the real world is a potential source of interference. Accordingly, the average power level of units as they leave the factory is of no relevance.

AirCell also quibbles with some of the data measured by V-Comm, claiming two measurements are "extremely atypical." Again, these are real-world, actual measurements of units that could be interfering with cellphone conversations on the ground. It matters not whether they are typical or atypical. AirCell is simply trying to cast out unfavorable data by

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<sup>2</sup> AirCell letter dated March 1, 2004 at 1.

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 2.

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calling it unrepresentative, as it has in the past. Even if the measurements are atypical, they are real and the transmissions can cause interference. Moreover, AirCell has no basis on which to base an assertion that some of V-Comm's measurements are atypical, given that AirCell has submitted *no* measurements of actual, real-world airborne transmit powers. In addition, AirCell cannot justify its claim that the airborne units' power levels should be discarded as atypical, because the power levels are, in all instances, controlled directly by AirCell itself.

Finally, we disagree with AirCell's claim that it was not aware that Petitioners would be conducting tests to monitor the power levels of units communicating through the Ellendale and Marlboro sites.<sup>5</sup> Petitioners had put AirCell on notice that it would be conducting such tests in their January 16 letter to the Commission.<sup>6</sup>

The bottom line is that Petitioners have gone to considerable trouble to gather information on which the Commission can base a reasoned assessment of AirCell's interference potential, even though AirCell has failed to live up to its responsibility for data submission and appears to have tried to thwart Petitioners' data collection. Petitioners therefore ask that, at a minimum, the Commission fully consider the extensive data now before it in deciding whether AirCell has failed to shoulder its burden of proving that terrestrial cellular operations will be free of harmful interference caused by AirCell.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

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<sup>5</sup> See *id.* at 2.

<sup>6</sup> See Petitioners' letter dated January 16, 2004 at 1 ("Petitioners have therefore contracted with V-Comm to capture such data at a number of the sites used as AirCell ground stations. . . . [T]he data will be collected over a period of approximately one week at each site.").